WP(C) 491/2007
BEFORE
THE HON'BLE MR JUSTICE B.K. SHARMA

JUDGMENT AND ORDER (ORAL)

1. Heard learned counsel for the parties.

2. In all the writ petitions, the basic grievance is the alleged discrimination in the matter of providing financial aid to the educational institutions represented by the petitioners. According to the petitioners, their respective schools have been deprived of the benefit of financial aid without any reasonable classification. It is their stand that the schools represented by the private respondents have been favoured for such financial aid without following the laid down norms. According to the petitioner, their schools being older than that of the schools represented by the private respondents, as per the dates of establishment, dates of recognition etc., their schools ought to have been preferred over the private respondents.

3. The criteria for granting financial assistance to the educational institutions was adopted and formulated by a cabinet memorandum. The views of Planning & Development Department, Finance Department and Education Department were also obtained and thereafter the Cabinet approved the same in its meeting held on 21.6.2005. In this connection, the petitioners have referred to the stand of the respondents in the writ proceeding in WP(C) No. 7325/2004 since disposed of by judgment and order dated 30.9.2005. In that proceeding, the respondents had filed Misc. case No. 2379/2005, interalia stating as follows:

7. That the grant of financial assistance to any institution is a matter of policy decision of the Government and the same had to be taken as provincialisation of institutions were not possible in view of the resource grants as well as fiscal reforms. While formulating the criterion for grants of financial assistance, the Government had to consider various aspects. No doubt seniority of institutions was considered as one of the basic criterias, but for selection of the educational institutions for grant financial assistance, the Cabinet Sub-committee and the Government also considered other aspects as need and performance of the institutions, relevant. The Government while formulating of the policy for grant of financial assistance had to consider the importance of other aspects as need and performance of the institutions apart from seniority keeping in view the need to uplift backward areas and weaker sections of the society as well as the girl children

4. In the aforesaid proceeding, it was the stand of the respondents that for the purpose of examining the applications for grant of financial assistance a State Level Committee had been constituted and the financial grant would be made available w.e.f. 1.4.2005. It was the stand of the respondents that in the district level, Deputy Commissioners would be monitoring the scheme so that the funds are properly utilized. It was the further stand of the respondents that financial grants would be provided to the institutions on the basis of the basic criterion of seniority with relaxation in appropriate cases on the basis of need so as to provide necessary impetus to education for backward areas and amongst the weaker section of the society.

5. The above stand of the respondents in the said writ proceeding was in tune with the Cabinet memorandum dated 9.6.2005, relevant portion of which is quoted below:

The Sub-committee deliberated in the criteria for selection of institutions and decided that for selection of educational institutions for financial grant, the seniority by way of date of establishment, date of recognition and date of concurrence whichever is applicable will be taken as the basic criteria. However, th

e Govt. cannot ignore the extreme need of some of the educational institutions i n view of their disadvantaged locations. Hence it is decided that within the adm it of seniority, considering exceptional need, due to disadvantaged locations li ke Border areas, Char areas, Tea and Ex-tea Garden areas, areas predominated by weaker sections of the society like SC, ST, OBC and minorities where, in the opi nion of the Govt. there is urgent need to set up educational institutions, relax ation of seniority criteria may also be considered for assistance. Relaxation al so may be considered keeping in view the specific need for girls' education in s ome areas. Performance of the educational institutions and their enrolment shall also be taken into account in the selection of the educational institutions for financial assistance.

Further, the Cabinet Sub-committee decided to consider the seniority of the various categories of educational institutions on the following criteria.

1. For primary schools, the date of their establishment will be considered as their seniority.

2. In case of Middle Schools, High Schools and Higher Secondary Schools, th e seniority will be decided on the basis of the date of their recognition.

3. In case of Madrassa institution, the date of their recognition will cons idered to determine their seniority.

4. In case Sanskrit schools, the seniority will be decided from the date of their recognition.

5. In case of Junior College and Degree College, the seniority will be dete rmined on the basis of their dates of receiving concurrence.

6. The seniority of the educational institutions from L.P. level up to High School will be LAC wise. For Higher Secondary School, Jr. College and Degree Co llege, the seniority will be decided state-wise.

The Cabinet Sub-committee also decided to constitute a State Level Commi ttee for examining the applications received for financial assistance as per the above seniority criteria and on the basis of the broad guideline indicated abov e with the following members:-

a) Commissioner & Secretary, Education (E&S) - Chairman
b) Director, Higher Education - Member
c) Director, Secondary Education - Member
d) Joint Secretary, Education (E&S) - Member - Convener

As per decision of the Cabinet Sub-committee the name of the institution s are collected from the concerned Directorates alonwgith the required informati on like date of establishment, recognition, concurrence, enrolment, performance and location etc. of the institutions. The selection of the institutions will be made after finalization of the policy guideline in the State Cabinet. It is pro posed to provide the financial assistance with effect from 1st September, 2004 a s declared by the Hon'ble Chief Minister, Assam.

6. The aforesaid decision of the Government to provide financial assistance to the educational institutions primarily on the basis of seniority of establis hment, recognition etc. with relaxation wherever found necessary was put to chal lenge by filing the writ petition being WP(C) No. 4278/2004. In fact, the writ p etition was filed before issuance of the aforesaid Cabinet Memorandum making a c hallenge to the communication dated 20.8.2004 issued on the subject of selection of educational institutions for financial assistance, which is quoted below:

GOVT. OF ASSAM
OFFICE OF THE DIRECTOR OF ELEMENTARY EDUCATION,
ASSAM:KAHILIPARA:GUWAHATI-19

No. EPMD.17/2004/4 Dtd.Kahilipara the 20th Aug/04

To
The District Ele. Edn. Officer (ALL)
Sub:-Selection of Education Institution for financial assistance.

Sir,
With reference to the subject and Govt. letter quoted above, I am directed to state that Govt. has decided to provide financial assistance to Middle Schools yet to be provincialised w.e.f. 1st Sept. 2004. The beneficiary institutions should be selected on the basis of need performance and seniority. Though need and performances should get serious attention, the seniority in establishing the educational institutions should not be ignored. In case of BTAD areas the educational institutions should contain the name of the constituency and the district to which the institutions area situated.
Your are therefore, requested to furnish the list of Middle School on the basis of above mentioned three criterion as per performance enclosed herewith through special messenger within 25th August/2004 positively to this office.

7. The Court while entertaining the writ petition, by order dated 21.12.2004 made the following observations:

Considering the matter in its entirety, this Court is of the view that this Writ petition cannot be effectively disposed of until the Government formulates the requisite guidelines for the purpose of grant of financial assistance to the educational institutions concerned.
In the interest of justice, it is provided that the matter be listed on 24th January, 2005 for hearing and in the meanwhile, the State respondents shall formulate the requisite guidelines and policies for grant of financial assistance.
It is further directed that the respondents shall not finalize the list of educational institutions for the purpose of considering of grant of financial assistance to them without taking leave from this Court.

8. During the course of hearing of the writ petition, the aforesaid cabinet memorandum was placed on record by the respondents with the argument that the guidelines formulated are exhaustive and virtually met the grievance of the petitioners. From the Cabinet Memorandum and the stand of the respondents in the earlier writ proceedings what had transpired as recorded in the said judgment and order dated 30.9.2005 is that the selection of educational institutions for financial aid would be primarily on the basis of seniority as per the date of establishment/ recognition/concurrence whichever is applicable. Nonetheless, deviation from such a criterion, whenever found necessary in case of extreme need was also emphasized. Such deviation from the basic criterion of seniority in respect of granting financial assistance to the educational institutions, although junior as regards the date of establishment/recognition/ concurrence etc. was indicated to be in respect of the institutions with disadvantageous locations like border area, char area, Tea and Ex-tea garden area, areas dominated by weaker sections of the society like ST/SC/ OBC/MOBC and minorities, etc. specific need for girls' education in particular areas, performance and enrolments of the educational institution were also emphasized as the ground for relaxation from the basic criterion of seniority.

9. Taking note of the stand of the respondents, this Court on the said judgment and order observed as follows:

12. From the above, it will be seen that while seniority of the institutions on the basis of the date of establishment/recognition/concurrence is the basic criteria for rendering financial assistance, under certain conditions the departure from such criteria is sought to be achieved by the aforesaid Cabinet Memorandum which is also approved by the State Cabinet. Thus, the State Policy is involving in seeking the deviation from the basic norms of seniority, which cannot be said to be the mandate of the Constitution of India. Such relaxation conveyed in the Cabinet Memorandum being the realm of the policy decision of the State in absence of any allegation of arbitrariness, unreasonableness and violation of any constitutional provisions, came cannot be likely interfered with, more particularly, when the same is in the realm of policy decision of the State. The question of policy which involved in the matter is also one for the State Govt., keeping the past interest of the institution in view to decide. By final say in regard to such aspects comes under the purview of the Court. Further the other institutions to be benefited by the scheme are not represented in this proceeding.

15. In the instant case, the State Govt. has taken a policy decision to render financial assistance to the institutions primarily on the basis of the seniority subject to extending relaxation in case of the above requirements which I am of the considered opinion cannot be said to be arbitrary, unreasonable or violative of equity clause in the Constitution. The relaxation provided in the guidelines falls in the realm of reasonable classification. However, in the name of such relaxation, the State Govt. cannot act arbitrary motivated by extraneous consideration. The respondents will have to stick to the basic criteria of seniority and in the event of making any exception on need basis, the detail reasons will have to be recorded. In the event of ignoring an institution otherwise senior to an institution which is sought to be extended with the financial assistance, reasons will have to recorded.

16. As regards the performance of the education institution and their enrolment towards extending such relaxation, if the same is not adhered strictly, it may lead to arbitrary exercise of power. It may so happen that an institution in an interior place may have lesser enrolment than an institution located at a place with advantageous. Likewise, due to various factors performance of an institution of a recent origin may be better enrolment than an institution of the earlier origin. However, in the name of such better institution is ignored, same will lead to injustice to that institution. While it is true that an old institution which is continuing for the sake of exercise without any performance can be ignored the factors antecedent and relevant in such existence and continuity will have to be taken into account in as much as for the mismanagement of such institution at the hands of a few, cannot deprive the people of the area from upliftment of the school by providing financial assistance.

17. Subject to the above classification and modification of the Annexure-2 guidelines, same is upheld. However, the respondents while preparing the list of the institutions to be provided with financial assistance shall do so consistently keeping in mind the observations made above. While seniority of the institutions will be the basic criteria in providing financial assistance, in case of making any deviation extending relaxation as envisaged in the guidelines, detailed reasons shall be recorded for doing so. Similarly, in case of preferring an institution in the name of better performance and enrolment, the observations made above shall be taken into consideration and detailed reasons shall be recorded for superseding the senior institution. It will be advisable to incorporate the above recommendations in the guidelines for appraisal of all.

10. The aforesaid judgment and order was carried on appeal by way of Writ Appeal Nos. 677/2005 and 678/2005. The Division Bench of this Court has upheld the aforesaid judgment and order. Thus, the guidelines formulated by the State Government in the Education Department for providing financial assistance to the edu

cational institutions has been upheld by this Court. It being the own policy of the State Government, there is no gainsaying that the State will have to adhere to the same while selecting the educational institutions for granting financial assistance. As per the said policy guideline, the educational institutions will have to be provided with financial assistance primarily on the basis of seniority as per the dates of establishment/recognition/ concurrence etc. It is in exceptional circumstances, a deviation from such criterion can be made and that too for good and sufficient reasons to be recorded in writing. The Cabinet Memorandum itself provides the procedure to be followed in this regard.

11. In the present batch of writ petitions, the grievance of the petitioners has been noted above. It is their definite stand that the educational institutions by far junior to them have been selected for financial assistance in supercession of the senior schools on pick and choose basis and in violation of the adopted policy guidelines.

12. The respondents have filed their counter affidavit. The affidavit does not throw any light on the issue raised by the petitioners. Nothing has been stated as to on what basis the private respondents have been selected for financial assistance. In WP(C) No. 4822/2006, the Director of Elementary Education, Assam in his affidavit has taken the absurd stand that, after filing of the writ petition, a scrutiny was carried out in the matter to providing financial assistance. In this connection, the said Director has annexed the purported report dated 2.3.2007 as Annexure-A to the affidavit. In the report, the petitioner's school, namely Kanaklata Girls M.E. School also figures alongwith the schools, which have been favoured with the financial assistance. A bare perusal of the report shows that junior schools have been preferred over the petitioners without assigning any reason. Even the schools, which could not furnish required particulars have been provided with financial assistance.

13. In view of the aforesaid anomalous situation, learned Standing Counsel, Education Department was directed to produce the records containing the minutes of selection of the educational institutions for providing financial assistance. He was also requested to produce the relevant file containing the deliberations made, reasons assigned for relaxation and the final selection of the educational institutions for such financial assistance. To the great surprise of the Court no such records are available as has been submitted by the learned Standing Counsel. However, he has submitted that while 80% of the schools have been selected on the basis of seniority, remaining 20% have been selected without assigning any reason.

14. From the aforesaid stand of the respondents, what has come to the notice of the Court is that the respondents while formulating the policy guidelines for providing financial assistance to the educational institutions and successfully defending the same before this Court have deviated from the same with impunity. Inspite of granting several opportunities, no acceptable stand could be projected by the respondents towards deprivation of the petitioners and preferring the private respondents over the petitioners.

15. Learned Standing Counsel, Education Department, however, submits that in respect of some of the educational institutions in the category of the petitioners, same are of doubtful existence and in case of any direction to consider their case for financial assistance, proper verification would be required. At one stage of the hearing of the case, in view of the anomalous situation created by the respondents themselves, this Court wanted to know from the respondents as to whether, while not depriving the private respondents from the financial assistance which many of them have already received, whether it will be possible on the part of the Government to provide financial assistance to the petitioners applying the basic norms of seniority. Today, Mr. M.K. Choudhury, learned Sr. Standing Counsel, Education Department has submitted that there would be no difficulty

in doing so subject to proper verification of the claim of the petitioners.

16. There is no dispute that financial assistance is to be provided primarily on the basis of seniority from the date of establishment/recognition/concurrence etc. It is in exceptional circumstances, the respondents can deviate from such criterion for the reasons to be recorded in writing. However, as noticed above, the respondents have not been able to show anything as to how the criterion of seniority has been done away with in selecting the junior schools and upon what consideration. Nothing could be shown regarding relaxation etc. on need basis to deviate from the basic criterion of seniority. It leads to the irresistible conclusion that the private respondents have been preferred over the petitioners without any reason whatsoever and the respondents have merrily flouted the policy guidelines adopted by the Cabinet. This is really unfortunate and contemptuous. It is the same very respondents, who successfully defended the said policy guidelines in the earlier writ proceeding, but at the opportune moment deviated from the same.

17. In view of the above, I am of the considered opinion that the ends of justice would be met, if a direction is issued to the respondents to provide financial assistance to the petitioners at par with the private respondents with necessary verification etc. relating to particulars of the school. In the normal circumstances, a direction would have been issued to consider the case of the petitioners at par with the private respondents applying the same yardstick, parameters and norms, but, in view of the fact that the respondents have not applied any yardstick, parameters, norms and rather have deviated from the adopted policy guidelines towards selecting the private respondents, such a direction cannot be issued lest the same would give further handle to the respondents to do further mischief. Hence the above direction.

18. Financial assistance, now to be provided to the petitioners and other such similarly situated educational institutions upon verification of their necessary particulars shall be so provided within 31.7.2007. The fact that the private respondents have received the financial assistance prior in point of time than the petitioners will have no bearing in future consideration of the cases of the petitioners and other such educational institutions vis- -vis the private respondents.

19. With the above direction, all the writ petitions are disposed of.